REMARKS

Claims 1-6 and 8-37 are pending in the application. Claim 7 is cancelled.

Claim Rejections – 35 U.S.C. §112

The Examiner rejected claims 11-15 under 35 U.S.C. §112, second paragraph, as being indefinite. The Examiner rejected claims 6-8 under 35 U.S.C. §112, second paragraph, as being indefinite. Applicants respectfully traverse these rejections. Applicants have cancelled claim 7 and amended claim 13. In view of Applicants' amendments, it is respectfully requested that the Examiner's rejections under §112 be withdrawn.

Claim Rejections – 35 U.S.C. §103(a)

Claims 1, 3-7, 9-15, 17-19, 28, 29 and 31-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 6,192,388 *(Cajolet)* in view of US Pub. 2002/0133593 *(Johnson)*, and US 7,590,746 *(Slater)* and further in view of Official Notice ("ON"). Applicants respectfully traverse this rejection.

Claim 1

For ease of illustration, claim 1 is discussed first. Claim 1 is directed to a method which recites indicating to two or more remote systems in a distributed data processing system that a task, in a task list, is available for processing based on a distribution list, wherein the task is a compilation task and wherein an indication specifies at least one resource requirement. Claim 1 also recites receiving at least one response from each of at least two of the two or more remote systems capable of performing the task responsive to receiving the indication, wherein the at least one response is based on a determination by the two or more remote systems that the at least one resource requirement is satisfied, and wherein each of the responding remote systems has reserved at least a portion of its respective resources for performing the task based at least in

part on the at least one resource requirement. Claim 1 further recites assigning the task from the task list to a remote system of the at least two remote systems that responds first to the indication that the task is available for processing, and wherein assigning the task is performed without comparing operational capabilities of the at least two remote systems to each other.

The Examiner's rejection of claim 1 is incorrect at least because *Cajolet*, *Johnson* and *Slater*, either alone or in any combination, and further combined with the Examiner's Official Notice ("ON"), do not teach at least one claimed feature. For example, amended claim 1 recites "wherein <u>each of the responding remote systems</u> has <u>reserved at least a portion of its respective resources</u> for performing the task <u>based at least in part on the at least one resource requirement</u>." In the Office Action dated October 15, 2010, the Examiner argued that *Johnson* teaches this claimed feature because *Johnson* discloses computer sub-systems used to complete different operations. *See* Office Action, p.5 (citing *Johnson*, Fig. 5). *Johnson*, however, does **not** teach <u>reserving resources</u>, as called for in amended claim 1. *Johnson* teaches different sub-systems of a content delivery system may be chosen to perform certain operations, and that after being chose, the sub-system resources may be reserved while the operation in queued. *See Johnson*, Fig. 5 and accompanying description; Abstract; ¶[0150]. That is, *Johnson* describes first selecting a sub-system to perform an operation, and then reserving that specifically chosen sub-system's resources until the operation is completed. In contrast, claim 1 recites "receiving at least one response <u>from each of at least two of the two or more remote systems capable of performing the task responsive to receiving the indication,</u> wherein the at least one response is based on a determination by the two or more remote systems that the at least one resource requirement is satisfied, and <u>wherein each of the responding remote systems has reserved at least a portion of its respective resources for performing the task based at least in part on the at least</u>

one resource requirement." In other words, claim 1 requires that multiple remote systems reserve resources for possibly being selected to complete a task and *then* respond that the remote systems are capable of performing the task. Claim 1 also requires that the reserving of resources takes place *before* the selection of the remotes system to perform the task. ***Johnson*** does **not** teach these features. Similarly, ***Cajolet*** and ***Slater*** as admitted by the Examiner (Office Action, p.5) do not teach these features.

It is well established that teaching away by the prior art constitutes *prima facie* evidence that the claimed invention is not obvious. *See, inter alia, In re Fine*, 5 U.S.P.Q.2d (BNA) 1596, 1599 (Fed. Cir. 1988); *In re Nielson*, 2 U.S.P.Q.2d (BNA) 1525, 1528 (Fed. Cir. 1987); *In re Hedges*, 228 U.S.P.Q. (BNA) 685, 687 (Fed. Cir. 1986). It is also well established that where a modification or combination renders a prior art reference inoperable for its intended purpose, the reference teaches away from the modification or combination. *In re Gordon*, 221 U.S.P.Q. (BNA) 1125, 1127 (Fed. Cir. 1984). That is, if the proposed combination undermines the purpose of the prior art, it cannot be obvious. ***Johnson*** teaches polling (or receiving notifications from) various sub-systems in order to determine availability and adequacy of resources. *See **Johnson***, ¶¶[0159]-[0162]. This is in direct contradiction with the Examiner's position with respect to the ***Slater*** reference and in direct conflict with the claimed feature of "assigning the task is performed without comparing operational capabilities of the at least two remote systems to each other." As such, ***Johnson*** teaches away.

With respect to teaching away, the courts have said: "A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the application. The degree of teaching away will of course depend on the

particular facts; in general a reference will teach away if it suggests that the line of development flowing from the reference's disclosure is unlikely to be productive of the result sought by the applicant." *In re Gurley*, 31 U.S.P.Q.2d (BNA) 1130, 1131 (Fed. Cir. 1994). Here, because the reserving of resources, *as taught in Johnson*, requires that the sub-system first be selected to perform the operation, a person of ordinary skill in the art would not have looked to the disclosure of **Johnson** because **Johnson** would require a sub-system selection to be made before resources are reserved. In contrast, claim 1 recites reserving resources, responding to an indication, and then being assigned a task.

In the Office Action, the Examiner argues that **Slater** does not check for operational capabilities, and thus **Slater** allegedly discloses the claim amendment regarding assigning a task without comparing operational capabilities. *See* Office Action, pp.5-6. In the previous responses to Office Actions filed by Applicants, claim 1 was amended to recite, *inter alia*, assigning the task from the task list to a remote system of the at least two remote systems that responds first to the indication that the task is available for processing, and wherein assigning the task is performed without comparing operational capabilities of the at least two remote systems to each other. In the Office Action, the Examiner argues that the **Slater** teaches this claimed feature because **Slater** allegedly shows load-balancing techniques for servers in which the director server (or router) sends an investigatory signal to the web tier servers and assess which server had the quickest response time (*i.e.*, **Slater** determines "which replied faster"). *See* Office Action, p.6; *see* **Slater**, col. 1, lines 50-55. The Examiner's position is problematic for several reasons. For instance, the Background section of **Slater** states that while telecommunication links are the major factor in response time, the response time may be influenced by the CPU. *See id.* That is, the CPU speed *is compared* as part of the response time. **Slater** thus explicitly

discloses that operational capabilities are compared. In contrast, claim 1 recites "**without comparing operational capabilities** of the at least two remote systems to each other." In other words, while *Slater* teaches determining the quickest response time for which CPU properties are a part (this is not surprising because *Slater* is concerned with **load balancing**), but claim 1 recites "**without comparing operational capabilities** of the at least two remote systems to each other."

In the previous Final Office Action and Advisory Action, the Examiner argued that the response time checked by the system of *Slater* "does not mean that the load balancer compares the system's performance to assign task." *See* "Response to Arguments" section, p.2 of the Final Office Action dated 05/26/2010. However, this assertion is contradicted by the disclosure of *Slater*. In the Final and Advisory Office Actions, the Examiner improperly mixed the teachings of the Background section of *Slater* with the various embodiments of *Slater*. For example, *Slater*'s teaching clearly indicates its system provides software for controlling allocation of the request for a specific resource on the network of resource serves to a selected resource server, wherein the software includes a director adapted to direct the request to the selected server and wherein the director is adapted to receive a capacity input derived from an evaluation of capacities of each of the resource servers to serve out a specific resource. *See Slater*, col. 11, lines 44-56. Moreover, *Slater* actually affirmatively indicates that the "director" is adapted to select the selected resource server using the capacity input to establish that the server has capacity to serve out the specific resource. *Id.* This clearly indicates that *Slater* indeed checks the operational capabilities of the system, which is subject matter that is in direct contrast to the claims, and teaches away from the subject matter of the claims (as previously amended). This previous amendment includes the claimed feature that the assigning of the task is performed

without comparing operational capabilities of the at least two remote systems to each other. Therefore, in contradiction to the Examiner's assertion in the Final Office Action, *Slater* indeed checks for the operational capabilities of the system when assigning resource tasks.

Claim 1 also recites "assigning the task from the task list to a remote system of the at least two remote systems that responds first to the indication." In the Office Action, the Examiner admits that *Cajolet* does not teach this claimed feature. *See* Office Action, pp. 5-6. The Examiner, however, argues that *Slater* teaches this claimed feature because *Slater* allegedly discloses a load balancing technique for assigning a request service to a server which replies fastest to an investigatory signal. *See id.* *Slater* teaches a load-balancing technique employed by a director server which waits for replies from web tier servers. *See Slater*, col. 1, lines 50-55. *Slater* describes how the director servers use this technique for "measuring response time." *See id.* at lines 55-56. In other words, *Slater* does not determine which web tier server is the first to respond. Rather *Slater* teaches that the web tier server measures response time, or, put another way, *Slater* measures the time from the sending of the investigatory signal until the receipt of the web tier server response. In contrast, claim 1 calls for "assigning the task from the task list to a remote system of the at least two remote systems that responds first to the indication." As such, *Slater* does not, and cannot, teach this claimed feature, and *Cajolet*, as admitted by the Examiner, fails to remedy the fundamental deficiencies of *Slater*.

Applicants respectfully submit that for at least this reason, as well as arguments presented during the course of this prosecution, claim 1 is allowable. For at least these reasons, the claim 1 dependent claims [2-6, 8-9] are allowable. For at least similar reasons, claims 10, 18, 19, 29, 32 and 35 (and their respective dependent claims) are also allowable.

Claim 13

Claim 13 is discussed next. Claim 13 depends from article claim 10 and recites "wherein the instructions when executed enable the processor to allow the remote system having a desirable past performance to perform the task, wherein the past performance comprises at least one of a past completed compilation task and a performance on a project compilation basis." In the Office Action, the Examiner argues that *Cajolet* teaches this claimed feature because *Cajolet* describes re-compiling parts of a task that were interrupted by the "next available" assisting computer. *See* Office Action, p.12 (citing *Cajolet*, col. 10, lines 26-49). *Cajolet* teaches that if some portion of a distributed task was interrupted or incomplete for some reason, the incomplete portion may be assigned to the next available assisting computer. *Cajolet* does not teach that next available assisting computers are selected based upon past performance, as recited in claim 13, nor does *Cajolet* teach that past performance comprises a past completed compilation task or a performance on a project compilation basis. *Cajolet* simply assigns to the next available helper. *Johnson* and *Slater*, either alone or in any combination, and further combined with the Examiner's Official Notice ("ON"), fail to remedy this deficiency found in *Cajolet*.

For at least these reasons, claim 13 is allowable.

Claims 2, 8, 16, 20-27, 30 and 35-37

The Examiner rejected claims 35 and 37 under 35 U.S.C. §103(a) as being unpatentable over *Cajolet* in view of *Johnson* and *Slater*. Applicants respectfully traverse this rejection.

The Examiner rejected claims 16, 30 and 36 under 35 U.S.C. 103(a) as being unpatentable over *Cajolet-Johnson-Slater*, in view of US Pub. 2007/0011226 *(Hinni)*. Applicants respectfully traverse this rejection.

The Examiner rejected claim 2 under 35 U.S.C. 103(a) as being unpatentable over *Cajolet-Johnson-Slater-ON* as applied to claim 1, and further in view of US Pub. 2002/0087612 *(Harper)*. Applicants respectfully traverse this rejection.

The Examiner rejected claims 8, 20-27 under 35 U.S.C. 103(a) as being unpatentable over *Cajolet-Johnson-Slater-ON* as applied to claim 1, and further in view of *Harper* and *Hinni*. Applicants respectfully traverse this rejection.

While the Examiner has rejected the remaining claims [2, 8, 16, 20-27, 30 and 35-37] over *Cajolet* and *Slater* in view of various and sundry references, Applicants respectfully submit that the independent claims 1, 10, 18, 19, 29, 32 and 35, as shown above, are <u>allowable</u> over *Cajolet* and *Slater*. Therefore, the remaining claims are also allowable for at least this reason.

Reconsideration of the present application is respectfully requested.

In light of the arguments presented above, a Notice of Allowance is respectfully solicited. If for any reason the Examiner finds the application other than in condition for allowance, **the Examiner is requested to call the undersigned attorney** at the Houston, Texas telephone number (713) 934-4069 to discuss the steps necessary for placing the application in condition for allowance.

Respectfully submitted,

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